IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1524 of 2004
in
SPECIAL CIVIL APPLICATION No. 3931 of 2004
with
LETTERS PATENT APPEAL No. 1525 of 2004
in
SPECIAL CIVIL APPLICATION No. 3667 of 2004
with
CIVIL APPLICATION Nos. 2063 & 6225 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRITKUMAR K. RAWAL - Appellant(s)

Versus

DISTRICT COLLECTOR,MEHSANA & 3 - Respondent(s)

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Appearance :
MR SAURABH J MEHTA for Appellant(s) : 1,
MR VM PANCHOLI, AGP, for Respondent(s) : 1,3 - 4.
MR DG SHUKLA with Ms. VIDHI SHODHAN for M/s. NANAVATI & NANAVATI for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 03/02/2006

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

In both these appeals, the appellants, original petitioners, have challenged the validity of a common judgment delivered in Special Civil Applications Nos. 3931 and 3667 of 2004 dated 21st July, 2004. In view of the said fact, at the request of the learned advocates, both the appeals have been heard together.

2. The facts giving rise to the said petitions, in a nutshell, are as under:-

2.1 The original petitioners were working under Bahucharaji Mataji Temple Trust, respondent No. 2 herein in different capacities like peons and watchmen. Respondent No. 2-Trust wanted to reorganize its activities and, therefore, it retrenched the petitioners and other similarly situated persons, by orders dated 23rd March, 2004 upon payment of retrenchment compensation as per the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act'). It was specifically stated in the retrenchment orders that the provisions of the ID Act were not applicable to the

Trust, but for sake of abundant caution, the Trust had paid retrenchment compensation to the petitioners. The said orders were challenged in the aforesaid writ petitions, which have been rejected, and being aggrieved by the order of rejection, the petitioners have filed these appeals.

3. Learned advocate Shri Saurabh Mehta appearing for the petitioners has submitted that respondent No.2-Trust is a 'state' within the meaning of Art.12 of the Constitution of India. As the Trust is a 'state' within the meaning of Art. 12 of the Constitution of India, the petitions filed by the petitioners were maintainable and the petitioners should not have been retrenched from service. According to him, the Trust has made an effort to fill up the posts held by the petitioners by giving contracts to some other persons. In fact, the intention of the employer Trust was to relieve the petitioners from their posts and to appoint other persons under the guise of giving contract for the same work. He has drawn our attention to the advertisement issued by the Trust for inviting offers from persons interested in doing the work which the petitioners were doing and has submitted that such an action on the part of the Trust is not

permissible in law.

4. He has relied upon the judgment delivered in the cases of **Gujarat State Fertilizer Co. Ltd. & Anr. v. Association of officers, GSFC, Fertilizernagar**, 1995(2) GLH 179; **Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R. Rudani and others**, AIR 1989 SC 1607; and **Uptron India Ltd. v. Shammi Bhan and anr.**, AIR 1998 SC 1681.

5. So far as the judgment delivered in the case of **Gujarat State Fertilizer Co. Ltd**. (supra) is concerned, it has been relied upon to show that the petitioners have a right to livelihood and, therefore, their services ought not to have been terminated by the Trust, which is a state.

6. So far as the judgment delivered in the case of **Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and others** (supra) is concerned, it has been relied upon to submit that mandamus could have been issued by the learned single Judge.

7. It has been thereafter submitted that according to the law laid down by the Hon'ble Supreme Court in the case of **Uptron India Ltd. (**supra), when the 'State' is the employer, service of a person cannot be terminated except in accordance with law.

8. He has also relied upon the judgments delivered in the case of R.D. Shetty v. International Airport Authority of India, AIR 1979 SC 1628; and in the case of Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : AIR 1981 SC 487 to substantiate his above submissions.

9. He has thereafter submitted that the learned single Judge has committed an error by coming to a conclusion that the Trust is not a 'State'. It has been submitted by him that the District Collector of District Mehsana is one of the trustees, who is managing the affairs of the respondent Trust and he is the main person on the Board, which has been constituted by the State of Gujarat. As the said Board is having control over the temple managed by the Trust, the Trust is a 'State' within the meaning of Art. 12 of the Constitution of India and, therefore, the learned single Judge should not have held that the Trust is not a 'State'.

10. For the aforesaid reasons, it has been submitted that the impugned judgment delivered by the learned single Judge is bad in law and the said judgment should be quashed and set aside and the petitioners should be reinstated in service.

11. On the other hand, learned advocate Shri D.G. Shukla appearing for respondent No.2-Trust has submitted that the impugned judgment is just, legal and proper. He has also submitted that if the petitioners desire to challenge the orders of retrenchment by having recourse to the provisions of the ID Act, the Trust would not raise any objection about the maintainability of their cases before the Labour Court.

12. It has been thereafter submitted by him that, in fact, respondent No.2-Trust is not a 'State' as rightly held by the learned single Judge. So as to substantiate the said submission, he has relied upon the following observations made by the Hon'ble Supreme Court in the case of **Chander Mohan Khanna v. National Council of Educational Research and Training and others,** (1991) 4 SCC 578.

> “Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression

> "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of /Welfare State, independent institution, corporation and agency are generally subject to State control. The State control, however vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is "State." If the government operates behind a corporate veil, carrying out governmental activity and governmental functions of vita public importance, there may be little difficulty in identifying the body as "State' within the meaning of Article 12 of the Constitution."

13. It has been submitted by him that in the instant case there is no financial contribution of the State in the management of the Trust as the Trust is being managed and run only on the donations received from the general public.

14. Thereafter he has submitted that even a Division Bench of this Court in the case of **Dr. C.A. Shah v. Gujarat Cancer & Research Institute, Ahmedabad,** 33(1) 1992(1) GLR 687 has taken a similar view. In the said case, the question was whether Gujarat Cancer & Research Institute, Ahmedabad can be said to be a 'State' within the meaning of Art. 12 of the Constitution of India. It is pertinent to note that in the aforestated case

decided by this court, substantial financial assistance was being rendered to Gujarat Cancer and Research Institute by the State government and yet it was not treated as a 'State' by this court. In the instant case, the Trust is also not performing any public duty or function of the State.

15. He has also relied upon the judgment delivered by this court in the case of **Gujarat State Fertilizer Co. Ltd. & Anr.** (supra) wherein it was held that Gujarat State Fertilizer Co. Ltd., which had been promoted by the State of Gujarat and though its majority shares were held by the government financial institutions and nationalized banks, it was not a “State” within the meaning of Art. 12 of the Constitution of India.

16. He has thereafter submitted that the petitioners ought to have exhausted equally efficacious alternatively statutory remedy available under the provisions of the ID Act. He has submitted that whenever there is any equally efficacious alternative statutory remedy available to a litigant, the litigant must, first of all, exhaust such a remedy. So as to substantiate the said submission, he has relied upon the judgments delivered by the Hon'ble Supreme Court in the case of **U.P. Jal Nigam and Anr. v.**

Nareshwar Sahai Mathur and Anr., (1995) 1 SCC 21 and in the case of **Scooters India & Ors. v. Vijai E. Eldred**, (1998) 6 SCC 549.

17. Thus, learned advocate Shri Shukla appearing for the Trust has submitted that the judgment delivered by the learned single Judge is just, legal and proper and the appeals deserve to be dismissed.

18. We have heard the learned advocates at length and have also considered the judgments cited by them. We have also gone through the record pertaining to the case, and in our opinion, the view expressed by the learned single Judge is just and proper.

19. It is pertinent to note that the employer Trust cannot be said to be a “State” within the meaning of Art. 12 of the Constitution of India. If one looks at the observations made by the Hon'ble Supreme Court in the case of Chander Mohan Khanna (supra), it is very clear that the Trust can never be treated as a State. The Hon'ble Supreme Court has considered several factors which should be considered before considering a particular institution as a 'State' within the meaning of Art. 12 of the Constitution. Looking to the observations

of the Hon'ble Supreme Court, which have been reproduced hereinabove, we are of the view that the learned single judge has rightly come to the conclusion that the Trust is not a 'State'.

20. In the instant case, it is an admitted fact that the Trust is not getting any financial aid from the State of Gujarat. On the Board, which manages the Trust, there is only one member who is a government officer and other members of the Board are respected citizens or residents of a particular area. Simply because one of the members of the Board is the Collector of the District, it cannot be said that the said Trust is a “State”, especially when no financial assistance is given to the Board for managing the Trust and no function of the State is performed by the Trust. We, therefore, agree with the findings arrived at by the learned single Judge that respondent No.2-Trust is not a “State”.

21. We are in agreement with the submission made by learned advocate Shri Shukla appearing for the Trust that the petitioners ought to have approached the Labour Court under the provisions of the ID Act. He has fairly submitted that though in the orders, whereby the petitioners were retrenched from service, it has been

stated that the provisions of the ID Act are not applicable to respondent No.2-Trust, no objection with regard to jurisdiction would be raised before the Labour Court if the petitioners approach the Labour Court for challenging the validity of the retrenchment orders.

22. We are also of the view that very often in the matter of retrenchment, disputed questions of fact are involved and, therefore, it is always better for a litigant to exhaust equally efficacious alternative statutory remedy at the first instance as observed by the Hon'ble Supreme Court in the case of **U.P. Jal Nigam & Anr.** (supra)and in the case of **Scooters India & Ors**. (supra).

23. For the aforesaid reasons, we see no reason to interfere with the judgment delivered by the learned single Judge. We, therefore, dismiss the appeals. There shall be no order as to costs.

In view of dismissal of the appeals, the civil applications do not survive and they are disposed of as rejected.

(Anil R. Dave, J.)

(K.A. Puj, J.)

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